

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 MARLO D. THOMAS,

4 Plaintiff

Case No. 3:20-cv-00487-MMD-WGC

ORDER

5 v.

6 DR. TED HANF, et al.,

7 Defendants  
8

9 **I. DISCUSSION**

10 On June 1, 2021, the Court issued a screening order permitting two claims to  
11 proceed and dismissing one claim with leave to amend and one claim with prejudice.  
12 (ECF No. 5). The Court granted Plaintiff 30 days from the date of that order to file an  
13 amended complaint curing the deficiencies of the complaint. (*Id.*) The Court specifically  
14 stated that if Plaintiff chose not to file an amended complaint, the action would proceed  
15 only on Plaintiff's Eighth Amendment deliberate indifference claims against Defendants  
16 Luchessi and Hanf. (*Id.* at 10). Plaintiff has not filed an amended complaint. Rather,  
17 Plaintiff has filed a motion for direction from the Court (ECF No. 7) indicating that he does  
18 not want to file an amended complaint. Pursuant to the screening order, and Plaintiff's  
19 election to not file an amended complaint, this action will proceed only on Plaintiff's Eighth  
20 Amendment deliberate indifference claims against Defendants Luchessi and Hanf.

21 **II. CONCLUSION**

22 For the foregoing reasons, IT IS ORDERED that Plaintiff's motion for direction from  
23 the Court (ECF No. 7) is denied as moot.

24 IT IS FURTHER ORDERED that, pursuant to the Court's screening order (ECF  
25 No. 5), this action will proceed only on Plaintiff's Eighth Amendment deliberate  
26 indifference claims against Defendants Luchessi and Hanf.

27 IT IS FURTHER ORDERED that given the nature of the claims that the Court has  
28 permitted to proceed, this action is STAYED for 90 days to allow Plaintiff and Defendants

1 an opportunity to settle their dispute before the \$350.00 filing fee is paid, an answer is  
2 filed, or the discovery process begins. During this 90-day stay period and until the Court  
3 lifts the stay, no other pleadings or papers may be filed in this case, and the parties may  
4 not engage in any discovery, nor are the parties required to respond to any paper filed in  
5 violation of the stay unless specifically ordered by the court to do so. The Court will refer  
6 this case to the Court's Inmate Early Mediation Program, and the Court will enter a  
7 subsequent order. Regardless, on or before 90 days from the date this order is entered,  
8 the Office of the Attorney General will file the report form attached to this order regarding  
9 the results of the 90-day stay, even if a stipulation for dismissal is entered prior to the end  
10 of the 90-day stay. If the parties proceed with this action, the Court will then issue an  
11 order setting a date for Defendants to file an answer or other response. Following the  
12 filing of an answer, the Court will issue a scheduling order setting discovery and  
13 dispositive motion deadlines.

14 IT IS FURTHER ORDERED that "settlement" may or may not include payment of  
15 money damages. It also may or may not include an agreement to resolve Plaintiff's issues  
16 differently. A compromise agreement is one in which neither party is completely satisfied  
17 with the result, but both have given something up and both have obtained something in  
18 return.

19 IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required  
20 to pay the full \$350.00 filing fee. This fee cannot be waived and the fee cannot be  
21 refunded once the Court enters an order granting Plaintiff's application to proceed *in*  
22 *forma pauperis*. If the Court allows Plaintiff to proceed *in forma pauperis*, the fee will be  
23 paid in installments from his prison trust account. 28 U.S.C. § 1915(b). If Plaintiff is not  
24 allowed to proceed *in forma pauperis*, the \$350.00 will be due immediately.

25 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from  
26 the inmate mediation program, that party will file a "motion to exclude case from  
27 mediation" no later than 21 days prior to the date set for mediation. The responding party  
28 will have 7 days to file a response. No reply will be filed. Thereafter, the Court will issue

1 an order, set the matter for hearing, or both.

2 IT IS FURTHER ORDERED that the Clerk of the Court will electronically SERVE  
3 a copy of this order, the original screening order (ECF No. 5) and a copy of Plaintiff's  
4 complaint (ECF No. 6) on the Office of the Attorney General of the State of Nevada, by  
5 adding the Attorney General of the State of Nevada to the docket sheet. This does not  
6 indicate acceptance of service.

7 IT IS FURTHER ORDERED that the Attorney General's Office will advise the Court  
8 within 21 days of the date of the entry of this order whether it will enter a limited notice of  
9 appearance on behalf of Defendants for the purpose of settlement. No defenses or  
10 objections, including lack of service, will be waived as a result of the filing of the limited  
11 notice of appearance.

12 DATED: July 13, 2021.

13 *William G. Cobb*

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United States Magistrate Judge

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3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 MARLO D. THOMAS,

6  
7 Plaintiff

8 v.

9 DR. TED HANF, et al.,

10 Defendants

Case No. 3:20-cv-00487-MMD-WGC  
REPORT OF ATTORNEY GENERAL  
RE: RESULTS OF 90-DAY STAY

11  
12 **NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.**  
13 **THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

14  
15 On June 1, 2021, the Court issued its screening order stating that it had conducted  
16 its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case  
17 would proceed. The Court ordered the Office of the Attorney General of the State of  
18 Nevada to file a report ninety (90) days after the date of the entry of the Court's screening  
19 order to indicate the status of the case at the end of the 90-day stay. By filing this form,  
20 the Office of the Attorney General hereby complies.

21  
22 **REPORT FORM**

23  
24 [Identify which of the following two situations (identified in bold type) describes the case,  
and follow the instructions corresponding to the proper statement.]

25 **Situation One: Mediated Case: The case was assigned to mediation by a court-**  
26 **appointed mediator during the 90-day stay.** [If this statement is accurate, check **ONE**  
27 of the six statements below and fill in any additional information as required, then proceed  
to the signature block.]

28 \_\_\_\_\_ A mediation session with a court-appointed mediator was held on  
\_\_\_\_\_ [enter date], and as of this date, the parties have

1 reached a settlement (even if paperwork to memorialize the settlement  
2 remains to be completed). (If this box is checked, the parties are on notice  
3 that they must SEPARATELY file either a contemporaneous stipulation of  
dismissal or a motion requesting that the Court continue the stay in the case  
until a specified date upon which they will file a stipulation of dismissal.)

4 \_\_\_\_\_ A mediation session with a court-appointed mediator was held on  
5 \_\_\_\_\_ [enter date], and as of this date, the parties have not  
6 reached a settlement. The Office of the Attorney General therefore informs  
the Court of its intent to proceed with this action.

7 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
8 90-day stay, but the parties have nevertheless settled the case. (If this box  
9 is checked, the parties are on notice that they must SEPARATELY file a  
contemporaneous stipulation of dismissal or a motion requesting that the  
Court continue the stay in this case until a specified date upon which they  
will file a stipulation of dismissal.)

10 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
11 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter  
date].

12 \_\_\_\_\_ No mediation session with a court-appointed mediator was held during the  
13 90-day stay, and as of this date, no date certain has been scheduled for  
such a session.

14 \_\_\_\_\_ None of the above five statements describes the status of this case.  
15 Contemporaneously with the filing of this report, the Office of the Attorney  
General of the State of Nevada is filing a separate document detailing the  
status of this case.

16  
17 \* \* \* \* \*

18 **Situation Two: Informal Settlement Discussions Case:** The case was NOT assigned  
19 to mediation with a court-appointed mediator during the 90-day stay; rather, the  
20 parties were encouraged to engage in informal settlement negotiations. [If this  
statement is accurate, check **ONE** of the four statements below and fill in any additional  
information as required, then proceed to the signature block.]

21 \_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the  
22 parties have reached a settlement (even if the paperwork to memorialize  
23 the settlement remains to be completed). (If this box is checked, the parties  
24 are on notice that they must SEPARATELY file either a contemporaneous  
stipulation of dismissal or a motion requesting that the Court continue the  
stay in this case until a specified date upon which they will file a stipulation  
of dismissal.)

25 \_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the  
26 parties have not reached a settlement. The Office of the Attorney General  
therefore informs the Court of its intent to proceed with this action.

27 \_\_\_\_\_ The parties have not engaged in settlement discussions and as of this date,  
28 the parties have not reached a settlement. The Office of the Attorney  
General therefore informs the Court of its intent to proceed with this action.

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\_\_\_\_\_ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

Attorney Name: _____	_____
Print	Signature

Address: _____	Phone: _____
_____	_____
	Email: _____
	_____